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9 **BEFORE THE**  
10 **CALIFORNIA BOARD OF ACCOUNTANCY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **DENNIS AKIRA ITO**  
14 21700 Oxnard Street, #1200  
Woodland Hills, CA 91367

15 **Certified Public Accountant**  
16 **Certificate No. CPA 23233**

Case No. AC-2010-3

**ACCUSATION**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as  
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about June 25, 1976, the California Board of Accountancy issued Certified  
23 Public Accountant Number CPA 69113 to Dennis Akira Ito (Respondent). The Certified Public  
24 Accountant Certificate was in full force and effect at all times relevant to the charges brought  
25 herein and expires on July 31, 2010, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the California Board of Accountancy (Board),  
28 Department of Consumer Affairs, under the authority of Section 5100 of the Business and

1 Professions Code, which provides, in relevant part, that, after notice and hearing, the Board may  
2 revoke, suspend or refuse to renew any permit or certificate granted for unprofessional conduct  
3 which includes, but is not limited to, one or any combination of the causes specified therein,  
4 including willful violations of the Accountancy Act and willful violations of rules and regulations  
5 promulgated by the Board.

6 4. Business and Professions Code<sup>1</sup> Sections 118(b) and 5109 provide in pertinent part  
7 that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall  
8 not deprive the Board of its authority to investigate, or to institute or continue a disciplinary  
9 proceeding against a licensee upon any ground provided by law, or to enter an order suspending  
10 or revoking the license or otherwise taking disciplinary action against the licensee on any such  
11 ground.

#### 12 **STATUTORY AND REGULATORY PROVISIONS**

13 5. Section 5100 states:

14 "After notice and hearing the board may revoke, suspend, or refuse to renew any  
15 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5  
16 (commencing with Section 5080), or may censure the holder of that permit or certificate for  
17 unprofessional conduct that includes, but is not limited to, one or any combination of the  
18 following causes:

19 ...

20 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the  
21 same or different engagements, for the same or different clients, or any combination of  
22 engagements or clients, each resulting in a violation of applicable professional standards that  
23 indicate a lack of competency in the practice of public accountancy or in the performance of the  
24 bookkeeping operations described in Section 5052.

25 ...

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27 <sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise  
28 indicated.

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

...

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

"(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

"(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

6. Licensees are required by Board Rule 5 to comply with all Board rules, including Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards.

7. Business and Professions Code section 125 provides, in pertinent part, that any licensee is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him, who conspires with a non-licensee to violate any provision of this code.

#### **APPLICABLE PROFESSIONAL STANDARDS**

8. Professional standards or standards of practice pertinent<sup>2</sup> to this Accusation include, without limitation:

A. Title 31, Part 10 of Internal Revenue Service (IRS) Regulations (31 CFR 10)<sup>3</sup> including:

(1) Section 10.21 (Knowledge of Client's Omission), provides that:  
"[a] practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission."

<sup>2</sup> All references herein to standards and other authoritative literature are to the versions in effect at the time the shelters were being developed, marketed or sold.

<sup>3</sup> 31 CFR 10 is also referred to as "Circular 230" or Section 10 of the IRS Regulations. Among other things, Circular 230 governs practice by CPAs before the IRS.

1 (2) Section 10.22(a) (Diligence as to Accuracy), provides that, in general, a  
2 practitioner must exercise due diligence:

3 “(1) In preparing or assisting in the preparation of, approving, and filing tax  
4 returns, documents, affidavits, and other papers relating to Internal Revenue  
5 Service matters;

6 (2) In determining the correctness of oral or written representations made by the  
7 practitioner to the Department of the Treasury; and

8 (3) In determining the correctness of oral or written representations made by the  
9 practitioner to clients with reference to any matter administered by the Internal  
10 Revenue Service.”

11 (3) Section 10.30 (Solicitation), provides that a practitioner may not, with  
12 respect to any Internal Revenue Service matter, in any way use or participate in the use of any  
13 form or public communication or private solicitation containing a false, fraudulent, or coercive  
14 statement or claim; or a misleading or deceptive statement or claim.

15 (4) Section 10.34 (Standards for Advising with Respect to Tax Return Positions  
16 and for Preparing or Signing Returns), provides that a practitioner may not sign a tax return as a  
17 preparer if the practitioner determines that the tax return contains a position that does not have a  
18 realistic possibility of being sustained on its merits (the “realistic possibility standard”) unless the  
19 position is not frivolous and is adequately disclosed to the Internal Revenue Service.

20 B. American Institute of Certified Public Accountants (AICPA) Code of  
21 Professional Conduct, which includes Section I - Principles and Section II - Rules. Both the  
22 Principles (Articles III and VI) and the Rules are relevant to the allegations herein.

23 (1) Rule 102 (Integrity and Objectivity), provides that:

24 “In the performance of any professional service, a member shall maintain objectivity  
25 and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or  
26 subordinate his or her judgment to others.”

27 (2) Rule 102.2 (Conflicts of Interest), provides that:

28 “A member shall be considered to have knowingly misrepresented facts in violation  
of rule 102. . . when he or she knowingly—

1 a. Makes, or permits or directs another to make, materially false and  
2 misleading entries in an entity's financial statements or records; or

3 b. Fails to correct an entity's financial statements or records that are  
4 materially false and misleading when he or she has the authority to record an entry; or

5 c. Signs, or permits or directs another to sign, a document containing  
6 materially false and misleading information."

7 (3) Rule 102-4 (Subordination of Judgment by a Member), provides that:

8 "Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts  
9 or subordinating his or her judgment when performing professional services. Under this rule, if a  
10 member and his or her supervisor have a disagreement or dispute relating to the preparation of  
11 financial statements or the recording of transactions, the member should take the following steps  
12 to ensure that the situation does not constitute a subordination of judgment:

13 "1. The member should consider whether (a) the entry or the failure to record  
14 a transaction in the records, or (b) the financial statement presentation or the nature or omission of  
15 disclosure in the financial statements, as proposed by the supervisor, represents the use of an  
16 acceptable alternative and does not materially misrepresent the facts. If, after appropriate research  
17 or consultation, the member concludes that the matter has authoritative support and/or does not  
18 result in a material misrepresentation, the member need do nothing further.

19 2. If the member concludes that the financial statements or records could be  
20 materially misstated, the member should make his or her concerns known to the appropriate  
21 higher level(s) of management within the organization (for example, the supervisor's immediate  
22 superior, senior management, the audit committee or equivalent, the board of directors, the  
23 company's owners). The member should consider documenting his or her understanding of the  
24 facts, the accounting principles involved, the application of those principles to the facts, and the  
25 parties with whom these matters were discussed.

26 3. If, after discussing his or her concerns with the appropriate person(s) in  
27 the organization, the member concludes that appropriate action was not taken, he or she should  
28 consider his or her continuing relationship with the employer. The member also should consider

1 any responsibility that may exist to communicate to third parties, such as regulatory authorities or  
2 the employer's (former employer's) external accountant. In this connection, the member may wish  
3 to consult with his or her legal counsel.

4 4. The member should at all times be cognizant of his or her obligations  
5 under interpretation 102-3 [ET section 102.04].”

6 (4) Rule 201 (General Standards), provides that:

7 “A member shall comply with the following standards and with any interpretations thereof  
8 by bodies designated by Council.

9 A. Professional Competence. Undertake only those professional services that the  
10 member or the member's firm can reasonably expect to be completed with professional  
11 competence.

12 B. Due Professional Care. Exercise due professional care in the performance of  
13 professional services.

14 C. Planning and Supervision. Adequately plan and supervise the performance of  
15 professional services.

16 D. Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable  
17 basis for conclusions or recommendations in relation to any professional services performed.”

18 (5) Rule 202 (Compliance with Standards), provides that:

19 “A member who performs auditing, review, compilation, management consulting, tax, or  
20 other professional services shall comply with standards promulgated by bodies designated by  
21 Council.”

22 (6) Rule 501 (Acts discreditable), provides that:

23 “A member shall not commit an act discreditable to the profession.”

24 (7) Rule 501-4 (Negligence in the Preparation of Financial Statements or  
25 Records), provides that:

26 “A member shall be considered to have committed an act discreditable to the profession in  
27 violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such  
28 member—

1 a. Makes, or permits or directs another to make, materially false and  
2 misleading entries in the financial statements or records of an entity; or

3 b. Fails to correct an entity's financial statements that are materially  
4 false and misleading when the member has the authority to record an entry; or

5 c. Signs, or permits or directs another to sign, a document containing  
6 materially false and misleading information."

7 (8) Rule 502 (Advertising and Other Forms of Solicitation), provides that: "A  
8 member in public practice shall not seek to obtain clients by advertising or other forms of  
9 solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion,  
10 over-reaching, or harassing conduct is prohibited."

11 (9) Rule 502-2 (False, Misleading or Deceptive Acts in Advertising or  
12 Solicitation), provides that:

13 "Advertising or other forms of solicitation that are false, misleading, or deceptive are not in  
14 the public interest and are prohibited. Such activities include those that—

15 1. Create false or unjustified expectations of favorable results.

16 2. Imply the ability to influence any court, tribunal, regulatory agency, or  
17 similar body or official.

18 3. Contain a representation that specific professional services in current  
19 or future periods will be performed for a stated fee, estimated fee or fee range when it was likely  
20 at the time of the representation that such fees would be substantially increased and the  
21 prospective client was not advised of that likelihood.

22 4. Contain any other representations that would be likely to cause a  
23 reasonable person to misunderstand or be deceived."

24 C. AICPA Statements on Standards for Tax Services<sup>4</sup>, including:

25 (1.) TS Section 100 - Tax Return Positions.

26 (2.) TS Section 600 - Knowledge of Error: Return Preparation.

27 <sup>4</sup> The AICPA *Statements on Standards for Tax Services*, are codified as "TS" with section  
28 numbers, e.g., TS Section 100.

1 (3.) TS Section 800 - Form and Content of Advice to Tax Payers.

2 D. The Internal Revenue Code, including:

3 “(1) 26 U.S.C. §6111 (Section 6111), which governs the registration of tax  
4 shelters.

5 (2) 26 U.S.C. §6112 (Section 6112), which imposes certain obligations on the  
6 organizer or seller of a “potentially abusive tax shelter.”

7 **COST RECOVERY**

8 9. Code Section 5107(a) provides, in pertinent part, that the Executive Officer of the  
9 Board may request the administrative law judge, as part of the proposed decision in a disciplinary  
10 proceeding, to direct any holder of a permit or certificate found to have committed a violation or  
11 violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and  
12 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the  
13 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of  
14 costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of  
15 investigation and prosecution of the case.

16 **PUBLIC PROTECTION**

17 10. Code Section 5000.1 provides, as follows: “Protection of the public shall be the  
18 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,  
19 and disciplinary functions. Whenever the protection of the public is inconsistent with other  
20 interests sought to be promoted, the protection of the public shall be paramount.”

21 **FACTUAL BACKGROUND**

22 11. The subject matter of this Accusation is Respondent's participation in the  
23 development, promotion, and implementation of certain tax shelter schemes by himself and other  
24 KPMG<sup>5</sup> personnel, including senior partners and members of top management, which assisted

25 <sup>5</sup> At all times relevant to this Amended Accusation, KPMG was limited liability  
26 partnership headquartered in New York, New York, with more than 90 offices nationwide, of  
27 which several are in California. Among the California KPMG offices during the time period  
28 relevant herein were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and  
Walnut Creek. KPMG was one of the largest auditing firms in the world, providing audit services  
to many of the largest corporations in the United States and elsewhere. KPMG also provided tax  
(continued...)



1 high net worth United States citizens to evade United States individual income taxes on billions of  
2 dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax  
3 shelters.<sup>6,7</sup>

4 12. Respondent was an employee of KPMG LLP<sup>8</sup> from at least in or about 1973 (when  
5 the company used the name Peat, Marwick, Mitchell & Company) through in or about 2005,  
6 working in the Los Angeles and San Francisco Offices. In 1983, Respondent became a partner  
7 while working in the Los Angeles KPMG office. Sometime before 1994, he became the partner  
8 in charge of the Los Angeles Personal Financial Planning (PFP) group. In 1994, respondent was  
9 transferred to the San Francisco office to be the partner in charge of the San Francisco PFP group.  
10 In 2001, respondent transferred back to the Los Angeles office where he worked until in or about  
11 2003 when he transferred to the Woodland Hills office. Respondent separated from KPMG in or  
12 about 2005.

13 13. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of  
14 Facts attached to the Deferred Prosecution Agreement which KPMG entered with the federal  
15 government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the Board,  
16 KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached to the  
17 DPA (which was incorporated into Accusation AC-2006-28),

18 (...continued)

19 services to corporate and individual clients, some of whom were very wealthy. These tax services  
20 included, but were not limited to, preparing federal and state tax returns, providing tax planning  
21 and tax advice, and representing clients, for example, in Internal Revenue Service ("IRS") and  
22 Franchise Tax Board ("FTB") audits, and in Tax Court litigation with the IRS.

23 <sup>6</sup> The portion of KPMG's tax practice that specialized in providing tax advice to  
24 individuals, including wealthy individuals, was known as Personal Financial Planning, or "PFP."  
25 The KPMG group focused on designing, marketing, and implementing tax shelters for individual  
26 clients was known at different times as CaTS ("Capital Transaction Strategies"), and IS  
27 ("Innovative Strategies").

28 <sup>7</sup> KPMG personnel also formed alliances, operating agreements, and/or joint ventures with  
outside persons, including former partners, employees, and others. KPMG also worked with law  
firms/lawyers and with banks in implementing the FLIP, OPIS, and BLIPS tax shelter  
transactions. Significant activity and coordination regarding the design and implementation of  
the tax shelters took place by California licensees or on behalf of California taxpayers.

<sup>8</sup> KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating  
several offices in California. KPMG was engaged in providing tax services to corporate and  
individual clients and providing audit services to corporate, governmental and other clients. The  
Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective  
January 18, 2008. It is further referenced in **paragraph 12.**

1 “through the conduct of certain KPMG tax leaders, partners, and employees,  
2 during the period from 1996 through 2002, KPMG assisted high net worth  
3 individuals to evade individual income taxes on billions of dollars by developing,  
4 promoting, and implementing unregistered and fraudulent tax shelters. A number  
of KPMG tax partners engaged in conduct that was unlawful and fraudulent...”.  
(Accusation, Paragraph 57, quoting DPA.)<sup>9</sup>

5 14. Respondent was a tax partner at KPMG between 1996 and 2002, the period relevant  
6 herein. He participated in the above-described scheme, consisting of:

7 A. devising, marketing, and implementing fraudulent tax shelters;  
8 B. preparing and causing to be prepared, and filing and causing to be filed with the  
9 IRS false and fraudulent U.S. individual income tax returns containing the fraudulent tax shelter  
10 losses; and

11 C. fraudulently concealing those shelters from the IRS.

#### 12 **FLIP, OPIS, and BLIPS TAX SHELTERS**

13 15. The fraudulent tax shelter transactions which are the subject matter of this Accusation  
14 were FLIP ("Foreign Leveraged Investment Program"), OPIS ("Offshore Portfolio Investment  
15 Strategy") and BLIPS ("Bond Linked Issue Premium Structure").<sup>10</sup>

16 16. Respondent was generally involved in BLIPS, FLIP<sup>11</sup>, and OPIS<sup>12</sup> transactions.

17  
18 <sup>9</sup> See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11  
19 of Stipulation AC-2006-28 for detail.

20 <sup>10</sup> During the relevant time period, KPMG personnel, some of its clients, and others  
involved in these tax shelter transactions prepared, signed and filed tax returns that falsely and  
21 fraudulently claimed over \$4.2 billion in bogus tax losses generated by FLIP and OPIS  
transactions, and \$5.1 billion generated by BLIPS transactions. A significant proportion of the  
22 tax payers who filed tax returns with KPMG's assistance using FLIP, OPIS, and BLIPS tax  
shelters were California taxpayers. Approximately 29% of the transactions were in California  
and approximately 38% of KPMG's fees originated in California.

23 <sup>11</sup> FLIP was essentially similar to OPIS. The shelters were designed to generate bogus  
capital losses in excess of \$20 million through the use of an entity created in the Cayman Islands.  
The client purportedly entered into an "investment" transaction with the Cayman Islands entity by  
24 purchasing a purported warrant or entering into a purported swap. The Cayman Islands entity  
purportedly made a pre-arranged series of investments, including the purchase, from a bank, of  
25 bank stock using money purportedly loaned by the bank, followed by a repurchase of that stock  
by the pertinent bank at a prearranged price. The tax shelter transactions were devised to last for  
26 only approximately 16 to approximately 60 days, and the duration of the shelter was pre-  
determined.

27 <sup>12</sup> OPIS was essentially similar to FLIP, described in the footnote above. KPMG's gross  
28 fees from OPIS transactions were at least \$28 million.

17. The law in effect from at least in or about August 1997 provided that if a taxpayer claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties, ranging from 20%-40% of the underpayment of tax attributable to the shelter, unless the tax benefit was supported by an independent opinion relied on by the taxpayer in good faith that the tax benefit was "more likely than not" to survive IRS challenge.

18. Respondent signed at least five opinion letters and at least four engagement letters without knowing or being aware of the individual or the client's specific needs or circumstances. He signed these letters without independently scrutinizing the content of the letters, or their effect or applicability to the respective clients. In addition, he failed to carefully read or understand the content and information contained in the letters.

## FLIP and OPIS SHELTERS

19. In all material respects, FLIP and OPIS were the same. FLIP and OPIS were generally marketed only to people who had capital gains in excess of \$10 million for FLIP and \$20 million for OPIS.<sup>13</sup>

20. Respondent was generally involved in FLIP and OPIS transactions, the number of which is known to Respondent but not to Complainant. Respondent was the engagement partner for at least two OPIS transactions. Respondent signed at least one FLIP and two OPIS opinion letters and, with the assistance of other KPMG tax personnel and their associates, issued and caused to be issued opinion letters although he knew, inter alia, that tax positions taken were not “more likely than not” to prevail against an IRS challenge if the true facts regarding those transactions were known to the IRS; and that the opinion letters and other documents used to implement FLIP and OPIS were false and fraudulent in a number of ways, including that:

<sup>13</sup> In return for fees totaling approximately 5-7% of the desired tax loss, including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, KPMG, its KPMG tax personnel and their associates implemented and caused to be implemented FLIP and OPIS transactions and generated and caused to be generated false and fraudulent documentation to support the transactions, including but not limited to KPMG opinion letters claiming that the purported tax losses generated by the shelters were “more likely than not” to withstand challenge by the IRS. As agreed to, and arranged by, KPMG tax personnel, outside lawyers also issued “more likely than not” opinion letters in return for fees typically of approximately \$50,000 per opinion, which opinions tracked, sometimes verbatim, the KPMG opinion letter.

1 a. Money was paid by the FLIP and OPIS clients for an "investment" component  
2 of the transactions (a warrant or a swap), whereas in fact that money constituted fees paid to  
3 KPMG and other participants, as well as money that was temporarily "parked" in the deal but  
4 ultimately returned to the client.

5 b. There was no evidence of a "firm and fixed" plan to complete the steps making  
6 up the shelter in a particular manner when, in fact, there was such a plan, and the transactions in  
7 fact were designed to be completed, and were completed, in the particular manner designed to  
8 generate the tax loss.

9 c. The clients were not "more likely than not" to survive an IRS challenge (based  
10 on the "step transaction doctrine").<sup>14</sup>

### 11 BLIPS SHELTER

12 21. KPMG and its tax personnel and associates marketed and caused to be marketed, and  
13 implemented and caused to be implemented the transactions, and generated and caused to be  
14 generated false and fraudulent documentation to support the BLIPS transactions. This activity  
15 included, but was not limited to, generating KPMG opinion letters (and opinion letters by law  
16 firm(s) that claimed that the purported tax losses generated by the shelters were more likely than  
17 not to withstand challenge by the IRS. All of these opinion letters were almost identical.

18 22. Respondent was generally involved in BLIPS transactions, the number of which is  
19 known to Respondent but not to Complainant. KPMG and its tax personnel and associates  
20 marketed and caused to be marketed, and implemented and caused to be implemented the  
21 transactions, and generated and caused to be generated false and fraudulent documentation to  
22 support the BLIPS transactions.<sup>15</sup> This activity included, but was not limited to, generating

23  
24 <sup>14</sup> The "step transaction doctrine" is a legal doctrine permitting the IRS to disregard  
certain transactions having no economic substance or business purpose and the purported tax  
effects of those disregarded transactions.

25 <sup>15</sup> BLIPS generated at least \$5.1 billion in bogus tax losses. KPMG's gross fees from  
26 BLIPS transactions were at least \$53 million. Associated law firms and boutique practices had  
gross fees of at least \$147 million. The fees totaled approximately 5-7% of the desired tax loss,  
27 including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, a fee to a  
"boutique practice" equal to approximately 2.75% of the desired tax loss, and a fee to a law firm  
28 generally equal to \$50,000 per transaction.

1 KPMG opinion letters (and opinion letters by law firm(s)) that claimed that the purported tax  
2 losses generated by the shelters were more likely than not to withstand challenge by the IRS. All  
3 of these opinion letters were almost identical.

4 23. Respondent signed at least two BLIPS transaction opinion letters. He caused to be  
5 issued opinion letters related to this and other BLIPS transactions although he knew or should  
6 have known that (i) the tax positions taken were not more likely than not to prevail against an IRS  
7 challenge if the true facts regarding those transactions were known to the IRS, and (ii) the opinion  
8 letters and other documents used to implement BLIPS were false and fraudulent in a number of  
9 ways, including but not limited to the following:

10 a. BLIPS was falsely described as a three-stage, seven-year investment program,  
11 when in truth and in fact, all participants were expected to withdraw at the earliest opportunity  
12 and within the same tax year in order to obtain their tax losses. BLIPS was falsely described as a  
13 "leveraged" investment program, whereas, in fact, the purported loan transactions that were part  
14 of BLIPS (and that were the aspect of BLIPS that purported to generate the tax loss) were shams -  
15 - no money ever left the bank and none of the banks assigned any capital cost to these purported  
16 BLIPS loans.

17 b. The BLIPS opinion letters falsely stated that the client (based on the client's  
18 purported "independent review", as well as that of outside "reviewers") "believed there was a  
19 reasonable opportunity to earn a reasonable pre-tax profit from the [BLIPS] transactions," when  
20 in truth and in fact, there was no "reasonable likelihood of earning a reasonable pre-tax profit"  
21 from BLIPS, and instead the "investment" component of BLIPS was negligible, unrelated to the  
22 large sham "loans" that were the key elements of the purported tax benefits of BLIPS, and was  
23 simply window dressing for the BLIPS tax shelter fraud.

24 c. The opinion letters and other documents were misleading in that they were  
25 drafted to create the false impression that KPMG, its tax personnel, and others associated with the  
26 tax shelter scheme were all independent service providers and advisors, when in truth and in fact  
27 KPMG personnel and associates jointly developed and marketed the BLIPS shelter.  
28

1           24. At various points during the development of BLIPS, KPMG tax personnel identified  
2 various significant defects of BLIPS, including that the description of BLIPS and the factual  
3 representations contained in the BLIPS opinion letter and in other documents were false.  
4 Nevertheless, in or about 1999, the marketing of BLIPS by the firm was approved. Likewise, the  
5 risks of proceeding with implementation of BLIPS in 2000 were discussed. Nevertheless, and  
6 despite the obviously fraudulent nature of BLIPS and the warnings conveyed, KPMG tax  
7 personnel decided not to refund BLIPS fees and to proceed with the issuance of "more likely than  
8 not" opinion letters on all of the 1999 transactions with the intent that BLIPS clients would claim  
9 the bogus BLIPS losses on 1999 tax returns. KPMG tax personnel and others, including  
10 Respondent, continued to be involved in the implementation of more BLIPS tax shelter  
11 transactions in 2000 and, in 2001.

#### 12                                   **FRAUDULENT CONCEALMENT OF TAX SHELTERS**

13           25. In addition to preparing and causing to be prepared false and fraudulent  
14 documentation relating to and implementing the shelter transactions, and in addition to preparing  
15 and causing to be prepared tax returns that fraudulently incorporated the bogus tax shelter losses,  
16 Respondent participated in steps taken to fraudulently conceal from the IRS the fraudulent tax  
17 shelters, and/or knew or should have known that the steps would have the effect of concealing the  
18 shelters from the IRS. The steps taken included, but were not limited to, the following:

- 19                   (1) not registering the tax shelters with the IRS as required by law;  
20                   (2) preparing and causing to be prepared tax returns that fraudulently concealed the  
21 bogus losses from the IRS.

#### 22                                   **FAILING TO REGISTER TAX SHELTERS**

23           26. Under the law in effect at all times relevant to this Accusation, an organizer of a tax  
24 shelter was required to "register" the shelter by filing a form with the IRS describing the  
25 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities  
26 claiming a benefit from the shelter were required to include with their income tax returns a form  
27 disclosing that they had participated in a registered tax shelter, and disclosing the assigned  
28 registration number. Notwithstanding these legal requirements, KPMG's tax personnel decided

1 not to register the tax shelters based on a "business decision" that to register the shelters would  
2 hamper KPMG's ability to sell them. Respondent knew or should have known of the requirement  
3 to register the shelters.

4 **FIRST CAUSE FOR DISCIPLINE**  
5 **Fraud in the Practice of Public Accountancy**  
6 **[Business and Professions Code § 5100(c)]**

7 27. The matters alleged in paragraphs 11 through 26 are re-alleged as though fully set  
8 forth.

9 28. Respondent, serving as the engagement partner for, or involved in, a number of tax  
10 shelter transactions, among them those listed above, participated in employing various means to  
11 conceal from the IRS and other taxing authorities the fraudulent tax shelters. Respondent's  
12 license is therefore subject to disciplinary action based on his involvement or acquiescence in:

13 A. The failure of KPMG to register the tax shelters as required;

14 B. The preparation of, or causing to be prepared, false or fraudulent documentation  
15 supporting the implementation of the tax shelters; and/or

16 C. The implementation of the tax shelters, including but not limited to preparing  
17 and/or causing to be prepared or participating in the preparation and/or filing of tax returns that  
18 fraudulently concealed the bogus losses from the IRS.

19 29. Incorporating by reference the matters alleged in paragraphs 25 and 26, cause for  
20 discipline of Respondent's license for fraud in the practice of public accountancy is established  
21 under Code Section 5100(c).

22 **SECOND CAUSE FOR DISCIPLINE**  
23 **Dishonesty in the Practice of Public Accountancy**  
24 **[Business and Professions Code § 5100(c)]**

25 30. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters  
26 by reference, cause for discipline of Respondent's license for dishonesty in the practice of public  
27 accountancy is established under Code Section 5100(c) based upon his dishonest acts, and  
28 omissions in the course of his participation, as described above, in the FLIP, BLIP, and OPIS tax  
shelters.





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**SIXTH CAUSE FOR DISCIPLINE**  
**Repeated Negligent Acts in the Performance of Public Accountancy**  
**[Business and Professions Code § 5100(c)]**

34. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for repeated negligent acts in the performance of public accountancy is established under Code Section 5100(c) based upon his conduct, which constituted repeated extreme departures from applicable professional standards.

**SEVENTH CAUSE FOR DISCIPLINE**  
**Breach of Fiduciary Responsibility in the Performance of Public Accountancy**  
**[Business and Professions Code § 5100(i)]**

35. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for breach of fiduciary responsibility in the performance of public accountancy is established under Code Section 5100(i) based upon his conduct, which constituted extreme departures from applicable professional standards.

**EIGHTH CAUSE FOR DISCIPLINE**  
**Knowing Preparation, Publication, or Dissemination of False, Fraudulent or**  
**Materially Misleading Financial Statements, Reports, or Information**  
**[Business and Professions Code § 5100(j)]**

36. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information is established under Code Section 5100(j) based upon his conduct, which constituted a departure from applicable professional standards.

**NINTH CAUSE FOR DISCIPLINE**  
**Obtaining Valuable Consideration by False Pretenses**  
**[Business and Professions Code § 5100(k)]**

37. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for obtaining valuable consideration by false pretenses is established under Code Section 5100(k) based upon his conduct, which constituted a departure from applicable professional standards.

**TENTH CAUSE FOR DISCIPLINE**  
**Violation of Professional Standards**  
**[Board Rule 58/ Business and Professions Code § 5100(g)]**

38. Complainant realleges paragraphs 11 through 26 above. Incorporating those matters by reference, cause for discipline of Respondent's license for violation of professional standards is established under Board Rule 58 and Code Section 5100(g) based upon his conduct, including signing and causing to be signed, engagement and opinion letters for clients without independently, diligently or accurately evaluating the specific needs and concerns of the clients, which constitutes willful violation of Board Rule 58, providing cause for discipline of his license under Code section 5100(g).

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accountant Number 23233, issued to Dennis Akira Ito.

2. Ordering Dennis Akira Ito to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

Dated: October 29, 2009

  
PATTI BOWERS  
Executive Officer  
California Board of Accountancy

*Complainant*

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